

The Illinois Use Tax does not apply to tangible personal property acquired outside of Illinois which is then brought into Illinois to the extent the property was taxed by another State and such tax was properly due and paid to such other state. See 86 Ill. Adm. Code 150.310(a)(3). (This is a GIL.)

April 17, 2006

Dear Xxxxx:

This letter is in response to your letter dated January 24, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

This letter is to request information on whether your State will allow a credit or refund of taxes paid when equipment is moved out of state. The issue is not related to an audit or examination of any return or any pending judicial action or proceeding.

FACTS:

ABC is an out-of-state vendor and is registered to collect sales/use tax in the state of Illinois. ABC leases equipment to XYZ which has a business location in Illinois. The leases are true leases with a 'Fair Market Value' purchase option and are for a term of 3 years.

Upon initiating a lease, XYZ instructs ABC to ship the equipment to Illinois where XYZ takes possession of the equipment and places the equipment into use. ABC pays Illinois sales/use tax on the purchase of the equipment from its vendor. Pursuant to the lease agreement the Lessee has contractually agreed to reimburse the Lessor for the cost of the Illinois taxes paid.

Nine months into the lease XYZ moves the equipment from Illinois to a state that charges sales/use tax on the periodic rental payments invoiced from ABC to XYZ.

QUESTIONS:

ABC has paid sale/use tax on the purchase of equipment shipped to Illinois and leased to XYZ. XYZ is seeking a refund of prorated taxes paid to Illinois because the equipment was used in Illinois for only a portion of the lease term.

1. Will Illinois allow the Lessor or the Lessee a prorated credit or refund for the use tax paid since the asset was later moved out-of-state and used out-of-state?
2. If credit is allowed should XYZ file for a refund or should ABC refund or credit the tax to XYZ and take a credit on its next month's sale/use tax return?
3. If credit is not allowed, what is the State's reason that this is not double taxation?

Your assistance is greatly appreciated.

DEPARTMENT'S RESPONSE

In Illinois, under the Use Tax Act, persons who purchase tangible personal property from out-of-State retailers, and either ship or bring that property into Illinois would incur Use Tax liability. The purchaser must self assess the tax and remit it directly to the Department of Revenue. The purchaser would get credit against his or her Illinois Use Tax obligations for taxes properly due and paid in another state. See 86 Ill. Adm. Code 150.310(a)(3). Many other states have similar arrangements. As a result, although Illinois has no provisions for the kind of prorated refund your company is interested in, you may find that another state will give credit against its taxes for the tax properly due and paid in Illinois. Inquiry should be made to the other state.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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